

Based upon the evidence presented and for preliminary hearing purposes, the Appeals Board finds as follows:

All three of the above issues raised by the respondent are issues enumerated in K.S.A. 44-534a(a)(2) as jurisdictional and subject to review by the Appeals Board.

(1) The first issue that the Appeals Board will address in this appeal is whether claimant notified the respondent of his alleged work-related injury as required by K.S.A. 44-520. The Administrative Law Judge found in his preliminary hearing order that the claimant had sustained a work-related injury and appropriate notice of said injury was given by the claimant to the respondent.

Respondent argues that there is absolutely no evidence contained in the record of this preliminary proceeding that establishes that the claimant notified the respondent of an alleged accidental injury within the ten-day period required by K.S.A. 44-520. Respondent does recognize that the claimant testified that two months after his alleged injury on October 6, 1993, he notified his supervisor, Kevin Collins, that his hernia was work related. Claimant contends that he was injured on October 6, 1993, while lifting a Payless rack weighing between one-hundred to one-hundred and fifty (100-150) pounds. He testifies that he received medical treatment the next day at Shawnee Mission Medical Center and returned to work with work restrictions of no lifting, standing and climbing for three days. However, claimant does not establish that he told his supervisor, Todd Wimpy, that the work restrictions were a result of an on-the-job injury. Todd Wimpy testified on behalf of the respondent and denied receiving such work restrictions and further denied that claimant had ever told him that he had been hurt while working for the respondent.

It is the claimant's burden to prove his right to workers compensation benefits by establishing various conditions upon which his right depends. See K.S.A. 44-501(a). The claimant has the burden to persuade the trier of facts by a preponderance of credible evidence based on the whole record. See K.S.A. 44-508(g). The Workers Compensation Act requires an injured employee to give his employer notice of his work-related injury within ten (10) days, except that actual knowledge of the accident by the employer or the employee's agent shall render such notice unnecessary. See K.S.A. 44-520. The Appeals Board, after a close examination of the evidentiary record in this preliminary hearing matter, finds that there is no evidence that the claimant notified the respondent or an agent of the respondent that his hernia was work related until the claimant claims he told his supervisor, Kevin Collins, some two (2) months after the injury date. Accordingly, the claimant failed to notify the respondent of his alleged injury within the required ten (10) days. However, this ten (10) day requirement is not a bar to a claim, if just cause is shown within seventy-five (75) days from the alleged date of accident. Through his own testimony, the claimant does establish that he notified the respondent that his hernia was work related two (2) months after his date of injury. This would have been within seventy-five (75) days in which the statute allows the claimant to show just cause. The Appeals Board, however, concludes after review of the evidence presented that the claimant failed to present any evidence of just cause for not notifying the respondent within ten (10) days.

Since the claimant failed to give timely notice within ten (10) days and failed to establish just cause for not notifying respondent of his alleged injury within seventy-five (75) days, the claimant is barred from maintaining a claim for compensation benefits. See K.S.A. 44-520.

(2)(3) In regard to the last two issues raised by the respondent of timely written claim and whether the claimant suffered a work-related accidental injury, the Appeals Board finds these issues are moot because of the above finding of no timely notice.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Alvin E. Witwer, is reversed and

the claimant is denied benefits against the respondent and its insurance carrier for an alleged accidental injury occurring on October 6, 1993.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: William M. Tinsley (Pro Se), Mission, KS  
Stephen P. Doherty, Kansas City, KS  
Alvin E. Witwer, Administrative Law Judge  
George Gomez, Director